Supreme Court, U.S.
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No. 96-1140

In The

Supreme Court of the United States

October Term, 1996

TADEUSZ TARAPACKI,

Petitioner,

vs.

NEW JERSEY ReINSURANCE COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Petitioner, Tadeusz Tarapacki, received and continues to receive Workers' Compensation benefits from respondent, New Jersey ReInsurance, in the amount set forth by court order. Accordingly, the questions raised by this Petition for Certiorari are:

1. May a petitioner seek relief from this Court when the underlying issue is moot, in violation of Article III of the United States Constitution?

2. May a petitioner seek review of a state court decision in which no federal question was raised or decided, in violation of 28 U.S.C. § 1257?

3. May a petitioner seek review of a state court decision that was decided on independent and adequate state grounds?

4. May a petitioner seek relief from this Court where the federal question raised is irrelevant to the disposition of this matter?

LIST OF INTERESTED PARTIES PURSUANT TO RULE 29.6

Petitioner, Tadeusz Tarapacki, is a natural person. Respondent, New Jersey ReInsurance Company, is a subsidiary of New Jersey Manufacturers Insurance Company, a New Jersey corporation. Respondent has no subsidiaries.

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New Jersey Workers' Compensation and Employer's Liability Insurance Manual, Part 3, § 14 3

Respondent, New Jersey ReInsurance Company (NJRe), submits this brief in opposition to this Petition for Certiorari, which seeks review of a judgment of the Superior Court of New Jersey, Appellate Division.

OPINIONS BELOW

The New Jersey Supreme Court denied certification at 683 A.2d 1162 (1996), by an Order contained in the appendix to the Petition for Certiorari at 1a. In doing so, that court denied review of a judgment announced in an unreported opinion of the Superior Court of New Jersey, Appellate Division, Docket No. A-6141-94T3, located at 2a-12a of the appendix to the Petition for Certiorari.

STATEMENT OF JURISDICTION

Petitioner, Tadeusz Tarapacki, claims jurisdiction under 28 U.S.C. § 1257. His claim is unfounded. As set out below, the dispute between petitioner and NJRe is moot, because petitioner is receiving the payment that he seeks. Thus, this Court is without any case or controversy to adjudicate. Further, the federal questions that petitioner raises in this Petition for Certiorari were neither argued nor decided below and therefore were not preserved for this Court's review. As a result, this Court is without jurisdiction to hear this matter.

COUNTERSTATEMENT OF THE CASE

A. Overview

Petitioner's recitation of the issues presented contains numerous factual and legal misstatements. Those misstatements go to the heart of petitioner's claims before this Court. Because the record below demonstrates that the questions presented are

without merit — indeed, were never raised or adjudicated below as required under 28 U.S.C. § 1257 and relevant case law, as well under as Supreme Court Rule 14(1)(g)(i) — and also that this action is moot, the Court should deny the Petition for Certification.

Specifically, the issues that petitioner raises are moot because petitioner is receiving payment in the amount equal to that which sought through initiation of this action. Second, no federal question of full faith and credit was argued or decided below. Third, the state courts below decided this action on independent state grounds. Indeed, the sole issue before the Superior Court of New Jersey, Appellate Division, was an interpretation of NJRe's contract of insurance issued to petitioner's employer. (Petition 8a-9a (listing questions presented below).) Last, even if petitioner's full faith and credit argument could somehow be construed as properly before this Court, the question is irrelevant to the disposition of this case. As noted, the enforceability of petitioner's Pennsylvania judgment (which has been paid) in New Jersey is not part of this suit. Instead, the action below concerned only petitioner's rights against NJRe as assignee of his employer's contractual rights, which, because of the payment of the Pennsylvania judgment, are moot.

B. Diversified's Application for New Jersey Workers' Compensation Insurance

Petitioner's employer, Diversified Contracting, though its agent, Braishfield Associates, Inc., applied for a contract of workers' compensation insurance through the Compensation Rating and Inspection Bureau of New Jersey ("Rating Bureau"). That entity oversees the New Jersey Workers' Compensation Insurance Plan (the Plan), which is an assigned risk pool providing New Jersey workers' compensation and employers'

liability insurance to employers unable to obtain such coverage in the voluntary market. (Pet.'s App. Div. Apx. Pa218.) The Plan governs only liabilities under the *New Jersey* Workers' Compensation Act. It provides, in relevant part, as follows:

> **Preamble.** This Plan has been adopted by the insurance company members of the Compensation Rating and Inspection Bureau and approved by the Commissioner of Insurance for the benefit of employers subject to the New Jersey Workers Compensation law. It provides the means for an employer to satisfy the requirements of that law . . . .
>
> * * *
>
> 1. This Plan is available to any employer in good faith entitled to insurance under the New Jersey Workers Compensation Law, who is unable to secure insurance for their liability under that law and who does not have outstanding any uncontested unpaid premium in connection with any Workers Compensation and Employers Liability Insurance in effect during the two years immediately preceding.

(New Jersey Workers' Compensation and Employer's Liability Insurance Manual, Part 3, § 14.) The Rating Bureau assigns the insured to a participating insurer. That insurer plays no part in the application process. (Pet's App. Div. Apx. Pa 218.)

In its application dated September 21, 1989, Diversified identified only its Moorestown, New Jersey, headquarters as a

site to be insured. (Petition 3a.) Despite the fact that Diversified had existing operations in Pennsylvania (where Petitioner was employed), Diversified executed a certification to its application that stated that the disclosure was accurate and that it understood that the Rating Bureau would rely on the disclosure in assigning Diversified an insurer. Further, the certification disclosed that the policy issued would insure only New Jersey sites and that other arrangements were necessary for out-of-state operations. (Pet.'s App. Div. Apx. Pa 225.)

C. NJRe's Policy and Endorsement

Based on the information contained in the application, NJRe issued a policy of workers' compensation insurance with a policy period of November 5, 1988, to November 5, 1989. (Petition 3a.) That policy, as the court below found, provided insurance under the law of New Jersey. (*Id.* at 10a-11a.) It also provided "other States' Insurance," which is designed to provide the insured with coverage in certain designated states for new operations not in existence at the time the application is executed and for the insured's unexpected or temporary presence in those states. The policy provided such other states' insurance as follows:

> **A. How This Insurance Applies**
>
> 1. This other states insurance applies only if one or more states are shown in item 3.C. of the Information Page.
>
> 2. If you begin to work in any one of those states and are not insured or are not self-insured for such work, the policy will apply as though that state were listed in item 3.A. of the Information Page.

> 3. We will reimburse you for the benefits required by the workers compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.

B. Notice

> Tell us at once if you begin work in any state listed in item 3.C. of the Information Page.

(*Id.* at 3a-4a.)

On November 17, 1988, NJRe sent a questionnaire to Diversified to verify information in Diversified's application. NJRe requested, among other things, the identification of all operations outside of New Jersey. Diversified's response, received by NJRe on January 3, 1989, revealed that Diversified had operations in Pennsylvania, Delaware, and Maryland. (*Id.* 4a.) That response was NJRe's first notice of Diversified's non-New Jersey operations. (See Pet.'s App. Div. Apx. Pa 231-32.)

On January 20, 1989, NJRe wrote to Braishfield, stating:

> We have recently become aware, via a Questionnaire recently returned by the insured, that this insured has operations in the States of Pennsylvania, Delaware and Maryland. In view of the fact that it is our intent to insure the obligations of this risk under the New Jersey Workers' Compensation Statute and not to insure the obligations under the laws of any other state, we wish to advise that we will be endorsing

> our contract effective 12:01 a.m. February 24, 1989 to reflect Item 3C- Other States Insurance as "NONE". It will be necessary for other arrangements to be made for any obligations this employer may have under the laws of any other state.
>
> Our endorsement will follow under separate cover.

(Petition 4a; Pet.'s App. Div. Apx Pa 234.)

On January 31, 1989, NJRe mailed to Braishfield the endorsement deleting Other States Insurance coverage. The endorsement was effective approximately one month later, on February 24, 1989. (Petition 4a.)

D. Notice to NJRe of Petitioner's Accident

Pursuant to Diversified's request, NJRe had issued a Certificate of Insurance dated March 7, 1989. NJRe sent that Certificate of Insurance to Braishfield. The Certificate stated:

> THIS POLICY PROVIDES COVERAGE *ONLY* UNDER THE WORKERS' COMPENSATION LAW OF THE STATE OF NEW JERSEY AND NOT UNDER THE LAWS OF ANY OTHER STATE. IF YOU MUST HIRE EMPLOYEES OUTSIDE OF NEW JERSEY, COVERAGE FOR THOSE OUT-OF-STATE EMPLOYEES MUST BE SECURED ELSEWHERE.

(Petition 5a (emphasis in original).) On March 20, 1989, Tarapacki was injured in Philadelphia, Pennsylvania. On April

13, 1989, Mr. Tarapacki filed a workers' compensation claim. Diversified answered that claim on May 8, 1989, stating that it had no workers' compensation insurance in Pennsylvania. (*Id.*)

On May 10, 1989, NJRe received a claim from Diversified in connection with the Tarapacki matter. NJRe responded on May 26, 1989, stating that it would process under the claim under its New Jersey policy only. On June 20, 1989, it agreed to pay the claim under New Jersey law. (*Id.* at 5a-6a.)

On July 14, 1989, the Pennsylvania Workers' Compensation Court made an award to Tarapacki, but found that Diversified had no workers' compensation insurance on the date of accident. Thereafter, on March 20, 1990, Tarapacki instituted suit against Diversified in the Superior Court of New Jersey, Law Division, Camden County, for enforcement of the Pennsylvania judgment. (*Id.* at 6a.)

The Law Division entered final judgment by default against Diversified on May 7, 1990. Diversified vacated that judgment on January 30, 1991. It answered Tarapacki's complaint and instituted a third-party action against NJRe and New Jersey Manufacturers Insurance Co. (NJM) on February 2, 1991, also in the Superior Court of New Jersey, Law Division, Camden County. (*Id.* at 6a-7a.)

NJM and NJRe filed answers and counterclaims on April 15, 1991, to which Diversified responded on May 6, 1991. On June 12, 1992, NJM and NJRe were granted summary judgment in the Superior Court of New Jersey, Law Division, Camden County, on grounds that the July 14, 1989, Pennsylvania Workers' Compensation Court finding of no insurance was *res judicata* against Tarapacki and Diversified. (*Id.* at 7a.)

On January 12, 1993, Tarapacki and Diversified entered a

consent judgment in the Superior Court of New Jersey, Law Division, Camden County, in favor of Tarapacki in the amount of $140,306.58. Diversified assigned to Tarapacki all its rights, including appeal of the summary judgment in favor of NJRe. Tarapacki appealed. (*Id.*)

The Commonwealth Court of Pennsylvania reversed the Pennsylvania Workers' Compensation Court on April 14, 1994, and remanded for a hearing on whether Diversified had Pennsylvania workers' compensation insurance on the date of Tarapacki's accident. Thereafter, on July 20, 1994, the Superior Court of New Jersey, Appellate Division, reversed the Law Division's grant of summary judgment and remanded for the question of coverage. The Appellate Division suggested a stay until the Pennsylvania Workers' Compensation Court's re-hearing was decided. On August 1, 1994, the Appellate Division denied NJRe's request for reconsideration and clarification. (*Id.* at 7a-8a.)

On May 24, 1995, at a second hearing in the Superior Court of New Jersey, Law Division, the court granted NJRe summary judgment and remanded to the New Jersey Workers' Compensation Division for determination of Tarapacki's benefits. Tarapacki filed a motion for leave to appeal in the Appellate Division on June 8, 1995. The Appellate Division granted Tarapacki's motion for leave to appeal on June 12, 1995, treating the motion as if it were an appeal as of right from final judgment. That appeal did not raise any questions of federal law. Instead, both the moving brief and the Appellate Division opinion were limited to the interpretation of the workers' compensation contract of insurance and the application of state law. (See *id.* at 8a-9a (listing issues raised by Tarapacki on appeal); Tarapacki's brief before the Superior Court of New Jersey, Appellate Division.)

On May 16, 1996, the Pennsylvania Bureau of Workers' Compensation issued an order finding that NJRe was liable to petitioner under the laws of Pennsylvania and ordering payment of $399 per week plus counsel fees. (Petition 48a-52a.) On June 18, 1996, the Superior Court of New Jersey, Appellate Division, affirmed the grant of summary judgment in favor of NJRe. (*Id.* at 2a.) Thereafter, NJRe began paying Tarapacki the amount of the workers' compensation award, plus fees. To date, the award totals over $250,000, including attorney's fees. On October 21, 1996, the New Jersey Supreme Court denied Tarapacki's petition for certification, which raised no federal question. (*Id.* at la.) Tarapacki filed this Petition for Certiorari on January 17, 1997.

REASONS FOR DENYING THE WRIT

I.

THE ISSUES ARE MOOT.

This Court should deny the Petition because the issues raised before the Superior Court of New Jersey, Appellate Division, are moot. As noted, Tarapacki is receiving workers' compensation benefits from NJRe that equal the payments that he would receive if NJRe had actually issued a workers' compensation policy of insurance pursuant to Pennsylvania law. Yet under *United States National Bank v. Independent Insurance Agents of America,* 113 S. Ct. 2173 (1993), " '[t]he exercise of judicial power under Art. III of the Constitution depends on the existence of a case or controversy,' " because " 'a federal court [lacks] the power to render advisory opinions.' " 113 S. Ct. at 2178 (second alteration in original) (quoting *Preiser v. Newkirk,* 422 U.S. 395, 401 (1975)). A case or controversy requires the " 'pursuance of an honest and actual antagonistic assertion of rights by one [party] against another.' " *Id.* (quoting *Muskrat v. United States*, 219 U.S. 346, 359 (1911)). Here, simply put,

Tarapacki has no additional relief that he may seek from NJRe. Accordingly, the case is moot and this Court is without power to entertain it. *Church of Scientology v. United States*, 113 S. Ct. 447, 449 (1992) (stating that Court has "no authority" to render opinion on moot question).

II.

THE FEDERAL QUESTIONS OF FULL FAITH AND CREDIT WERE NOT ARGUED OR DECIDED BELOW.

For this Court to review the final judgment of a state court, some question of federal law must have been presented below. "It is a long-settled rule that the jurisdiction of this Court to re-examine the final judgment of a state court can arise only if the record as a whole shows either expressly or by clear implication that the federal claim was adequately presented in the state system." *Webb v. Webb*, 451 U.S. 493, 496-97 (1981). Indeed, where the opinion below does not " 'pass upon' " some federal question, this Court will " 'assume[ ] that the omission was due to want of proper presentation in the state courts.' " *Id.* at 495 (quoting *Street v. New York*, 374 U.S. 576, 582 (1968)). The Court thus "decline[s] to reach" claims "not raised and passed upon in state court." *Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. 71, 77 (1988); *accord TXO Prod. Co. v. Alliance Resources Corp.*, 113 S. Ct. 2711 (1993) (refusing to consider constitutional attack on jury instructions not raised in highest state court below); *Rigging v. Nevada*, 504 U.S. 127, 133 (1992) (declining to reach Eighth Amendment claim not raised before Nevada Supreme Court); *Yee v. City of Escondido*, 503 U.S. 519, 533-34 (1992) (declining to reach substantive due process claim not raised below due to lack of jurisdiction under 28 U.S.C. § 1257); *Perry v. Thomas*, 482 U.S. 483, 492 and n. 9 (1987) (refusing to decide standing and unenforceability issues not raised below); *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969)

("[T]he Court will not decide federal constitutional issues raised here for the first time on review of state court decisions."). Indeed, "[t]he Court has consistently refused to decide federal constitutional issues raised here for the first in review of state court decision." *Cardinale*, 394 U.S. at 438.

Preservation of the federal question in the state proceeding from which review is sought is a necessary element of this Court's jurisdiction under 28 U.S.C. § 1257. *Yee*, 503 U.S. at 533 (discussing preservation of federal claim in state proceedings as requirement of "jurisdictional grant of 28 U.S.C. § 1257"); *Webb*, 451 U.S. at 495 (requiring, as matter of jurisdiction, petitioner to raise Constitutional claim in state court); *New York Times Co. v. Jascalevich*, 493 U.S. 1331, 1332 (1978) (discussing 28 U.S.C. 1257 as jurisdictional basis for review). Determining whether an issue was properly preserved is a federal question for this Court to decide. *Street*, 394 U.S. at 593. A state court decision cannot be said to have passed on federal questions that were never raised before it. *Bankers Life*, 486 U.S. at 79 n. 2 (" 'A claim or right which has never been made or asserted cannot be said to have been denied by a judgment which does not refer to it.' " (quoting *Dewey v. Des Moines*, 173 U.S. 193, 200 (1899)). Therefore, the Supreme Court Rules require a petitioner seeking review of a state court judgment to specify, with specific citations to the record below, when federal questions were raised below and how the state court below passed on them. Sup. Ct. R. 14.1(g)(i); *accord Webb*, 451 U.S. at 495 (discussing former R. 21.1(h)).

Underlying the requirement that federal questions be first raised in state court proceedings are "powerful policy considerations." *Webb*, 451 U.S. at 499. Those considerations include "comity to the States" and "a constellation of practical considerations." *Bankers Life*, 486 U.S. at 79. Comity to the states stems from the need to allow state courts an opportunity

to defend state law from federal challenges in order to preserve states' independent functioning and to allow them to construe state law so as to avoid challenges under federal grounds. *Webb*, 451 U.S. at 499-500. The "practical considerations" involve the proper development of the record below, which is necessary for correct adjudication of the federal questions raised before this Court. *Bankers Life*, 486 U.S. at 79; *Webb*, 451 U.S. at 500; *Cardinale*, 394 U.S. at 439 ("Questions not raised below are those on which the record is very likely to be inadequate, since it certainly was not complied with those questions in mind."). Also, litigation of the federal issues in state courts permits adjudication under state law, which "may well obviate any reason for [this Court] giving plenary consideration to the case." *Webb*, 451 U.S. at 501; *accord Cardinale*, 394 U.S. at 439; *see also North Dakota State Bd. of Pharmacy v. Snyder's Drug Stores, Inc.*, 414 U.S. 156, 159 (1973) (stating that "finality requirement" of 28 U.S.C. § 1257 prevents "piecemeal review" of state court decision; avoids advisory opinions; and minimizes "federal intrusion into state affairs" by limiting review of state-court decisions).

As is clear, the requirement under 28 U.S.C. § 1257 that a federal question be raised and addressed by the state court below is no mere " 'technicalit[y] to be easily scorned.' " *Montgomery Bldg. & Constr. Trades Council v. Ledbetter Erection Co.*, 344 U.S. 178, 180 (1952) (quoting *Radio Station WOW v. Johnson*, 326 U.S. 120, 124 (1945)). The minimum requirement for jurisdiction under 28 U.S.C. § 1257 is that the record must make clear that a claim under a federal statute of the Federal Constitution " 'was presented in the state courts and that those courts were apprised of the nature or substance of the federal claim at the time and in the manner required by the state law.' " *Bankers Life*, 486 U.S. at 77-78 (quoting *Webb*, 451 U.S. at 501). Moreover, the federal claim must have been presented to the state courts with sufficient specificity. A "vague appeal to

constitutional principles does not preserve [an] appellant's [constitutional] or due process claims. A party may not preserve a constitutional challenge by generally invoking the Constitution in state court and awaiting review in this Court to specify the constitutional provision it is relying upon." *Id.* at 77.

In a case presenting facts closely analogous to those contained in this Petition, the petitioner in *Webb* raised a question under the Full Faith and Credit Clause concerning the effect of a Florida judgment in later Georgia proceedings. Moreover, although she had used the term "full faith and credit" at several points in the state-court proceedings below, she never cited to the Federal Constitution or relied on cases discussing the clause. 451 U.S. at 496. Despite the respondent's failure to indicate in his opposing brief that the Full Faith and Credit issue had never been raised in the Georgia state courts, the Supreme Court determined, after it called for the record, "that the federal question was not raised below and that [the Court was] without jurisdiction in this case." 451 U.S. at 495. The Court accordingly ruled that it "must therefore dismiss without reaching the merits." *Id.*

Similarly, in *Bankers Life*, the petitioner, in a petition for rehearing below, claimed that a punitive damages award "violate[d] constitutional principles." 486 U.S. at 77. The Court rejected that "vague appeal" as insufficient to preserve his constitutional claims. *Id.*

Thus, for this Court to reach the merits of a federal question arising out of state court proceedings, the record must "clearly show[] that the federal issue has been properly raised below." *Id.* at 499. Specifically, the claim must " 'be brought to the attention of the state court with fair precision and in due time,' " which is accomplished "if the record as a whole shows whether expressly or by clear intendment" the federal question was

properly raised. *Street*, 394 U.S. at 584 (quoting *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 67 (1928)). The *Bankers Life* Court referred to that requirement as "the 'not pressed or passed upon below' rule." 486 U.S. at 79.

Here, the record below clearly demonstrates that petitioner failed to raise any federal issue of full faith and credit in the state proceedings below. The issues raised before the New Jersey Superior Court, Appellate Division, present questions under New Jersey and Pennsylvania statutes. Petitioner also challenged the trial court's interpretation of the contract of workers' compensation insurance, and argued against the application of New Jersey workers' compensation law. (Appendix to Petition 8a-9a; *see also* petitioner's brief to New Jersey Superior Court, Appellate Division at 9-25.) Nowhere in his brief to the New Jersey Superior Court, Appellate Division, did petitioner inject any federal question into his arguments on appeal. (Petitioner's brief to New Jersey Superior Court, Appellate Division at 9-25.)

As a result of that failure to raise federal questions in the state court proceedings, petitioner has failed to give the New Jersey court system an opportunity to defend its state laws against the challenge on federal issues that he now raises before this Court. *See Webb*, 451 U.S. at 499-500. Moreover, the record below is devoid of evidence, argument, and state-court reasoning on the subject, so that correct adjudication by this Court is impossible. *See Bankers Life*, 486 U.S. at 79. This record does not even present a general reference to the Federal Constitution such as that present in *Bankers Life*, 486 U.S. at 77 (declining to find federal question jurisdiction based on allegation below that punitive damages award "violates constitutional principles"). The record below cannot be said to show, " 'whether expressly or by clear intendment,' " that any federal question was properly raised in the state-court proceedings.

Street, 394 U.S. at 584 (quoting *Bryant*, 278 U.S. at 67). As a result of petitioner's failure to preserve any federal claim in the state proceedings below, this Court is without jurisdiction to grant certiorari, and it must deny this Petition on that ground alone.

III.

THE DECISION BELOW WAS DECIDED ON INDEPENDENT STATE GROUNDS, DEPRIVING THIS COURT OF JURISDICTION.

As this Court has recently stated, "[w]hen a state-court decision is clearly based on state law that is both adequate and independent, we will not review the decision." *Illinois v. Rodriguez*, 497 U.S. 177, 182 (1990). The presence of adequate and independent state grounds for a state-court decision presents a jurisdictional bar to this Court's review that must be considered before the Court can reach the merits of a case. *Id.* The Court can review a state-court decision only if that decision rests primarily on federal law or if state and federal law are " 'interwoven' " such that " 'the adequacy and independence of any possible state law ground is not clear from the face of the opinion.' " *Caldwell v. Mississippi*, 472 U.S. 320, 327 (1985), *cert. denied*, 479 U.S. 1075 (1987).

As the opinion of the New Jersey Superior Court, Appellate Division, makes clear, the decision below rests entirely on contract interpretation and the application of state law. (Petition at 8a-12a.) Specifically, the court below interpreted a contract for workers' compensation insurance under N.J.S.A. 34:15-81, and did not address any issue of full faith and credit, which was not a point petitioner raised on appeal before that court. (Petition 8a-9a.) The court below makes no reference to any federal question. Petitioner never raised such issues in the state-court

proceedings below. Under *Rodriguez* and *Caldwell,* this Court is without jurisdiction to review the state court opinion below. As a result, it must deny this Petition for Certiorari.

IV.

EVEN IF A FEDERAL QUESTION OF FULL FAITH AND CREDIT WERE RAISED, IT IS IRRELEVANT TO THE DISPOSITION OF THIS MATTER.

As the text of the Appellate Division opinion makes clear, any question of federal law would be irrelevant to the state-court proceedings below. Petitioner's New Jersey state court proceedings do not arise out of his Pennsylvania judgment (entered against Diversified) but instead from his assignment of rights from Diversified based on the contract of insurance between Diversified and NJRe. Specifically, petitioner received a judgment in Pennsylvania that he reduced to judgment in New Jersey against his employer, Diversified. Diversified entered into a consent judgment in New Jersey whereby petitioner was assigned all of Diversified's contractual right against NJRe. As discussed throughout this brief, the state court decisions below considered only issues arising out of the contract of insurance. Because the validity of petitioner's Pennsylvania judgment against Diversified was never at issue, his full faith and credit issues (raised only before this Court) would be irrelevant to the proceedings below. The Court should therefore deny this Petition for Certiorari.

CONCLUSION

For the reasons set forth above, the Court should deny the Petition for Certiorari.

Respectfully submitted,

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